

T H E C A S E O F

JOHN LEWKNER, Esq; against WILLIAM MOUNTAGUE, Esq;

Januar. 24.
1689.

Januar. 28.

Februar. 5.

Februar. 6.

Febr. 21.



HE said Mr. *Lewkner* brought an Action of Trespass against the said Mr. *Mountague*, for assaulting, keeping and detaining the Wife of the said Mr. *Lewkner*.

The said Cause was tryed at the *King's-Bench* Bar, and the said Mr. *Lewkner* obtained a Verdict and Judgment for 5000 *l.* Damages, besides Costs of Suit.

The said Mr. *Mountague* rendred himself to the *King's-Bench* Prison in discharge of his Bail.

The said Mr. *Mountague* was committed by the Court of *King's-Bench*, in execution for the said 5000 *l.* to the *King's-Bench* Prison, there to remain till he should satisfy the same.

Is the Testee of the Writs of Summons for this present Parliament.

The said Mr. *Mountague* was unduly elected a Burgess for this present Parliament, for the Burrough of *Stockbridge*, in the County of *Southampton*, for which a Petition is now depending in this Honourable House; and the said Mr. *Mountague* was, the last Parliament, elected for the said Burrough, but by

such notorious Bribery, That his Election was declared void, and he made incapable of being again elected a Member to serve in that Parliament for the said Burrough.

That the said Mr. *Mountague* having petitioned this Honourable House, prays to have his Privilege allowed him as a Member thereof, and that he may be discharged out of Execution.

Upon which a Committee hath been appointed to search Presidents, and report them to this Honourable House (which Report is now to be made) and to whom it is humbly submitted, whether the said Mr. *Mountague* ought by privilege of Parliament to be discharged out of Execution, and that for these Reasons.

I. That he was actually charged in Execution, both before he was elected, and the Testee of the Writ of Summons.

II. That in the following Cases, it hath been adjudged in Parliament, That a Person being in Execution, and afterwards chosen a Member of Parliament, ought not by the privilege thereof to be discharged out of Execution.

31 Hen. 6. *Thorpe* was Speaker of the House of Commons, and during a Prorogation, was taken in Execution, and committed Prisoner to the *Fleet*; the Parliament met, and demanded their Speaker; adjudged in Parliament, That he being in Execution, could not be delivered by Privilege of Parliament.

March. 2. *Fitzherbert* was taken in Execution about Ten of the Clock in the Morning, and about Six in the Afternoon was chosen a Burgess for *Newcastle Underlyne*; upon the meeting of the Parliament he prayed to be discharged by privilege; the Case was referred to the Committee of Privileges, and upon their Report, it was adjudged, That the said *Fitzherbert* ought not to be delivered out of Execution by Privilege of Parliament; And the Reasons of the Judgment are these, viz.

I. That he being in Execution before he was chosen Burgess, could not be delivered out of Execution by privilege of Parliament.

II. That he was not taken *Sedente Parlamento*.

III. That he was not taken *eundo*, nor *redeundo ad Parliamentum*.

Objection. That by the Statute of 1 Jac. I. cap. 13. it is enacted, That where any Member of Parliament being Arrested in Execution, and by Privilege of Parliament is set at Liberty, the Party shall have a new Execution, in like manner as he might have had, if no such former Execution had been sued out, or served.

Answer. That where any Member of Parliament during the Privilege or Prorogation thereof, is taken in Execution, he shall be delivered by Privilege of Parliament, for that the Publick had an Interest in his Person before the Party at whose Suit he was Arrested. And to prevent the Damage which might happen to the Subject, by delivering any Member of Parliament out of Execution (the Debt being in Law satisfied, when any Person is Discharged out of Execution) was the cause of making the said Statute; But the said Mr. *Mountague* being not a Member of Parliament when he was committed in Execution, is not (as is humbly conceived) either within the Letter or Meaning of the said Statute; and the rather, for that by the Proviso thereof it is declared, That the said Statute shall not extend to the diminishing of any Punishment to be by Censure of Parliament inflicted upon any Person, which shall make or procure to be made any such Arrest; whereby it is apparent, that the said Statute only extends to relieve such Persons, as during the Privilege of Parliament shall Arrest any Member thereof in Execution. So that if the said Mr. *Mountague* should be delivered out of Execution by Privilege of Parliament, the said 5000 *l.* would be thereby Discharged; neither can the said Mr. *Lewkner* by force of the said Statute have a new Execution; for that the said Mr. *Mountague*, when he was charged in Execution, was neither a Member of Parliament, nor had Privilege thereof.

That there is not one President, where any Person being in Execution before he was chose a Member of Parliament, and being afterwards chosen, was ever delivered out of Execution by Privilege of Parliament.

It's therefore hoped this Honourable House will not make this Case of Mr. *Mountague's* a President.